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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re L.D., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

R.D.,

Defendant and Appellant.

D075114

(Super. Ct. No. EJ004094)

APPEAL from order of the Superior Court of San Diego County, Gary M. Bubis,
Judge. Affirmed.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County
Counsel, and Tahra Broderson, Deputy County Counsel, for Plaintiff and Respondent.

R.D. (Mother) appeals an order denying her petition to modify the placement of her son, L.D., and terminating her parental rights. She contends that the juvenile court erred by determining that she failed to show that it was in the best interests of L.D. to change his placement and vacate the selection and implementation hearing, and terminating her parental rights, finding that the beneficial parent-child relationship exception to adoption did not apply. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ We conclude that the juvenile court did not err in making these rulings and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

In November 2016, the San Diego County Health and Human Services Agency (the Agency) petitioned the juvenile court under section 300, subdivision (b), on behalf of seven-year-old L.D. The Agency alleged that Mother was unable to provide regular care for L.D. due to her substance abuse.³ As discussed in the petition, Mother was arrested

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

² "In accord with the usual rules on appeal, we state the facts in the manner most favorable to the dependency court's order." (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1448, fn. 1.)

³ L.D.'s father suffered a traumatic brain injury in a car accident shortly after L.D.'s birth and was not involved in his life at the time of this proceeding. The Agency was unable to locate him until late in the proceedings. The Agency finally found him at a residential care facility in Oklahoma, where he was placed after having been found to be incompetent to stand trial in Oklahoma. The juvenile court ultimately terminated father's parental rights and he has not appealed. Accordingly, we do not discuss the limited evidence and proceedings as they relate to L.D.'s father.

for being under the influence of alcohol in public while caring for L.D. Police responded to calls that Mother was standing outside in the common area of an apartment complex, shaking L.D., and yelling at him that she wished he would die. When the police arrived, they observed that Mother was clearly inebriated, sitting on her apartment porch with a beer can next to her. L.D.'s grandfather agreed to stay at Mother's home and supervise L.D. for one month. However, a few weeks later, Mother drove to L.D.'s school to pick him up while under the influence of alcohol and was belligerent with a social worker, police officer, and her own mother when confronted. Based on these two incidents, the Agency removed L.D. from Mother's care. At L.D.'s jurisdiction and disposition hearing, the court sustained the allegations of the petition under section 300, subdivision (b). The court removed L.D. from Mother's custody and placed him in the home of his maternal grandmother.

The court directed that Mother be provided with reunification services. Supervised visitation with L.D. was authorized. Mother's case plan included mental health counseling, alcohol abuse treatment, and random toxicology testing.

In advance of the six-month review hearing, Mother was not making progress on her case plan. Mother had been discharged from an outpatient substance abuse program due to her failure to attend meetings. After two negative toxicology tests, Mother failed to appear for random testing. Mother was also failing to participate in individual therapy with an approved provider. Mother had some positive supervised visits with L.D., but often failed to show up for visits or arrived late. Mother was repeatedly belligerent with

everyone involved in her case plan. As the Agency summarized, "[M]other continues to act angry, argumentative, paranoid, disrespectful and rude to all parties in the case."

The Agency recommended that Mother receive an additional six months of reunification services. It did not recommend that L.D. be returned home because Mother "has not demonstrated the desirable behavioral changes nor has she participated in her case plan services." Only five days before the six-month review hearing, Mother unexpectedly moved to Texas, where she entered a residential treatment facility. At the hearing, the juvenile court continued L.D.'s placement with his grandmother, found that Mother had made no progress with her case plan, and ordered reunification services to continue until the 12-month review hearing.

In advance of the 12-month review hearing, the Agency recommended that the court terminate Mother's reunification services and set a selection and implementation hearing under section 366.26. Mother had refused to complete a hair follicle drug test when requested to do so by the Agency. Although Mother appeared to be making progress since moving to Texas, the social worker opined that the recency of her commitment meant that she had not made sufficient progress. She also had not visited in person with L.D. due to her move to Texas and continued to behave in a belligerent manner toward L.D.'s grandmother and toward other individuals involved in Mother's treatment.

Mother contested the Agency's recommendations, and the court conducted an evidentiary hearing. After hearing testimony from various witnesses, including Mother, the court terminated reunification services and set a selection and implementation

hearing. The court found that Mother was not credible, but rather, evasive and manipulative regarding her progress and efforts to reunify with L.D. The court also noted that, given Mother's history with alcohol abuse and relapses following short attempts at treatment, her recent progress was insufficient to show that she was likely to make the necessary progress to have L.D. returned to her care by the time of an 18-month hearing.

After her reunification services were terminated, Mother abandoned her treatment program in Texas and returned to California, where she resumed her visits with L.D. She also started to attend therapy sessions. Although she passed several drug tests, she also submitted diluted samples on multiple occasions over several months.⁴

Before the selection and implementation hearing, Mother filed a final section 388 petition asking the court to reinstate reunification services, vacate the section 366.26 hearing, and place L.D. in her care. To support the petition, she alleged a change in circumstances resulting from her participation in substance abuse treatment and other services. The court found that Mother had made a prima facie showing of changed

⁴ Mother's treatment coordinator indicated that although a pattern of diluted urine samples could be a problem, she was not concerned about Mother's diluted samples. The social worker, however, remained concerned that a total of eight diluted tests suggested such a pattern. Mother presented testimony from several experts that disagreed with the social worker and opined that other evidence suggested Mother's diluted tests were not intentional. Subsequently, the court accepted the testimony that the diluted tests should not be construed as positive tests, but expressed that "in 20 years I have never seen dilutes downplayed to the extent they were here and nullified. And I'm going to accept the testimony that they're valid dilutes, but I have to state that for the record, that this is the first time I've ever heard of this particular type of thing where we can forgive multiple, multiple dilutes, and clearly these tests were not random."

circumstances and set the matter for an evidentiary hearing to coincide with the selection and implementation hearing.

In its initial assessment report, the Agency recommended that the court terminate Mothers' parental rights and find L.D. to be adoptable. In the report, the social worker noted that Mother had participated in numerous supervised visits with L.D. and had a generally positive relationship with L.D. However, the social worker stated that "the natural parent-child relationship between [Mother] and [L.D.], while positive and loving, . . . does not outweigh the benefits that adoption provides, such as safety, stability, and permanence." The Agency remained concerned about Mother's extensive substance abuse history and, despite recent progress, expressed doubt that Mother could remain sober and adequately care for L.D. without the supervision of the Agency. The report also noted that Mother "continues to place blame on others for her son's continued dependency," "has had a preoccupation with diverting responsibility, and only recently acknowledged her role in the actions that led to [L.D.]'s removal."

The Agency recommended that the juvenile court select a permanent plan of adoption. The Agency acknowledged L.D.'s special needs, arising from his diagnosis of autism, for which he received in-home services and had an individualized education program (IEP) requiring supplemental aids for him to remain in general education. However, the social worker noted that L.D. was specifically adoptable by his current caregiver, his grandmother. If placement with the grandmother fell through, the Agency had identified 28 possible adoptive families in San Diego County that had expressed an interest in adopting a child with L.D.'s characteristics.

After several continuances and the filing of interim addendum reports, the Agency submitted a final addendum confirming its prior recommendations. At the hearing, the court received multiple reports in evidence and heard testimony from several witnesses, including an Agency social worker, L.D.'s grandmother, and Mother. Mother denied the details of the incidents giving rise to the dependency proceeding. L.D.'s grandmother testified that she believed that it was important for L.D. to maintain a relationship with Mother and that she would facilitate visits if she were to adopt L.D. Grandmother acknowledged that L.D. enjoyed his visits with his Mother, but testified that after the visits, he did not talk about the visits, did not act differently or seem depressed, and did not mention that he wished the visits could be longer.

The Agency social worker, Laura Mendoza, testified that she did not believe that it would be detrimental to L.D. if Mother's parental rights were terminated. She acknowledged the existence of a parent-child relationship between L.D. and Mother, but opined that L.D.'s need for stability outweighed the benefits of that relationship. She also explained that when L.D. was asked how he would feel if he were never able to see Mother again, he repeatedly stated that he would be "fine." Mendoza also relayed a statement from Mother that if her parental rights were terminated, she would not visit L.D. until he was 18 because it would be too emotionally difficult for her.

A clinical psychologist retained by Mother testified regarding the results of a bonding study that she had conducted to determine the degree of attachment between Mother and L.D. The psychologist opined that L.D. was emotionally attached to Mother and would suffer some detriment if he no longer had any contact with Mother.

The court first denied Mother's section 388 petition seeking placement of L.D. in her care, finding that Mother had demonstrated a change in circumstances given her recent involvement in treatment, but that it would not be in L.D.'s best interests to return him to her care.

Turning to the selection and implementation issue, the court acknowledged the strong relationship between Mother and L.D. However, the court found that during the reunification period, "Mother did everything she could to floor any type of progress in her case plan." The court concluded that "Mother's character and the way she has expressed herself for a long history would interfere so much . . . that the permanency of adoption outweighs the relationship." The court found that L.D. was adoptable and that none of the exceptions to adoption under section 366.26, subdivision (c)(1)(B) applied. The court therefore terminated parental rights and selected adoption as L.D.'s permanent plan.

DISCUSSION

I

Mother contends that the juvenile court erred in denying her petition filed pursuant to section 388 to vacate the section 366.26 hearing and modify L.D.'s placement by returning him to her care. Under section 388, a parent may petition the juvenile court to change, modify, or set aside a previous order on the grounds of changed circumstances or new evidence. The petitioning parent bears the burden of showing by a preponderance of the evidence that there is new evidence or changed circumstances that make a change in placement in the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317

(*Stephanie M.*.) "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability'

[Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*Ibid.*)

As Mother acknowledges, we review the juvenile court's decision under the abuse of discretion standard of review, which requires that this court not disturb the juvenile court's ruling " ' "unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination." ' " (*Stephanie M., supra*, 7 Cal.4th at p. 318.)

Mother contends that her recent progress in substance abuse treatment and participation in other voluntary services constitutes a change in circumstances warranting reconsideration of L.D.'s placement. The juvenile court found that Mother had demonstrated a change in circumstances and we see no error by the court in that regard.

However, the juvenile court also found that despite these changed circumstances, it was not in L.D.'s best interests to be returned to Mother's care. The court was concerned that Mother had only recently begun to participate in services and did so only after having failed to participate in the case plan prior to the termination of her reunification services.

Although Mother presents evidence that would suggest that she is on the road to recovery, she does not show that the trial court abused its discretion in finding that it

would not be in L.D.'s best interests to remove him from his grandmother's home and return him to Mother. L.D. was thriving in his current placement with his grandmother, who the Agency believed was "capable, motivated, and willing" to provide L.D. with a safe and stable permanent home. When contrasted with Mother's extensive history of substance abuse and only recent efforts to participate in treatment, the juvenile court could have reasonably concluded that it would be in L.D.'s best interests for him to remain in the care of his grandmother and for the court to advance to the selection and implementation hearing. Accordingly, the court did not make an arbitrary, capricious, or patently absurd determination when it denied Mother's section 388 petition.

II

Mother also contends that the court erred in selecting adoption as the permanent plan for L.D. following the selection and implementation hearing held pursuant to section 366.26. " 'Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.' [Citation.] 'A section 366.26 hearing . . . is a hearing specifically designed to select and implement a permanent plan for the child.' [Citation.] It is designed to protect children's 'compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.' [Citation.] 'The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful.' " (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53 (*Celine R.*).

"Whenever the court finds 'that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.' [Citation.] The circumstance that the court has terminated reunification services provides 'a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more' of specified circumstances. [Citation.] The Legislature has thus determined that, where possible, adoption is the first choice. 'Adoption is the Legislature's first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.' " (*Celine R., supra*, 31 Cal.4th at p. 53.)

"[I]f the child is adoptable . . . adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child. The specified statutory circumstances—actually, *exceptions* to the general rule that the court must choose adoption where possible—'must be considered in view of the legislative preference for adoption when reunification efforts have failed.' [Citation.] At this stage of the dependency proceedings, 'it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.' [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption." (*Celine R., supra*, 31 Cal.4th at p. 53.)

Mother does not dispute the court's finding that L.D. is likely to be adopted, but contends that the beneficial parent-child relationship exception applies such that her parental rights should not have been terminated and the court should have selected an alternative permanent plan. The beneficial parent-child relationship exception applies where "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The parent bears the burden in the juvenile court of showing the exception applies. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529 (*J.C.*).)

The parties do not dispute that Mother maintained regular visitation and contact with L.D. during the dependency case. Accordingly, the issues in this appeal are whether Mother established the existence of a beneficial parent-child relationship and whether the benefits of maintaining that relationship outweigh the benefits of adoption. (See *In re Logan B.* (2016) 3 Cal.App.5th 1000, 1011-1012.) "We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)⁵

⁵ Mother suggests the substantial evidence standard of review applies. (See, e.g., *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) We believe the hybrid standard of review is correct for the reasons stated in *J.C.*, *supra*, 226 Cal.App.4th at pages 530-531, and we need not add our voice to the discussion surrounding the proper standard in this instance. In any event, our conclusion would be the same even under the pure substantial

"To overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 (*Angel B.*.)

"A parent must show more than frequent and loving contact or pleasant visits. [Citation.] 'Interaction between natural parent and child will always confer some incidental benefit to the child The relationship arises from day-to-day interaction, companionship and shared experiences.' [Citation.] The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment between child and parent." (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.) "A friendly relationship . . . 'is simply not enough to outweigh the sense of security and belonging an adoptive home would provide.' " (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938.)

evidence standard of review. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*) ["The practical differences between the two standards of review are not significant."].)

"The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs. [Citation.] While the exact nature of the kind of parent/child relationship which must exist to trigger the application of the statutory exception to terminating parental rights is not defined in the statute, the relationship must be such that the child would suffer detriment from its termination." (*Angel B.*, *supra*, 97 Cal.App.4th at p. 467, fn. omitted.)

Even assuming that Mother established the existence of some positive parent-child relationship, which the Agency did not dispute and the court accepted as true, she has not shown that the juvenile court abused its discretion by finding that the benefits of maintaining that relationship were outweighed by the benefits of adoption. Although L.D. had lived with Mother for seven years prior to the Agency's intervention, the court could have reasonably found that this time together did not lead to a strong bond between parent and child based on the Mother's alcohol abuse and her failure to participate in good faith in the reunification process that was expressly aimed at returning L.D. to her care. This tenuous bond is reflected in the visitation reports, which show positive interactions but not a significant emotional attachment between L.D. and Mother. As the social worker testified, L.D. expressed no distress when visits with Mother were over. Although L.D. told the social worker that he missed his mother, he also stated that it would be "good" to continue living with his grandmother, and have visits with Mother. When asked how he would feel if he never saw his mother again, L.D. repeatedly stated

he would be "fine." He responded to a question about what he liked about the time he lived with Mother not by focusing on his relationship with his Mother, but instead, explaining that he enjoyed "[w]atching TV and playing video games" while under her supervision. This evidence supports the juvenile court's finding that while L.D. loved his mother and enjoyed spending time with her, there was not such a strong bond between mother and son as to justify depriving L.D. of the permanency of an adoption.

The juvenile court also focused on Mother's behavior during the proceeding, which suggested that she would undermine any permanent plan short of adoption. She often took actions—such as refusing to allow L.D. to attend a dentist appointment at a time when she could not be there and refusing to participate in a medical study that the social worker believed would benefit L.D., but that Mother feared would suggest that she had consumed alcohol while pregnant with L.D.—that were focused on her own self-interest rather than on L.D.'s best interests. Additionally, her inability to accept the truth of the allegations giving rise to this dependency proceeding supports the conclusion that she has not made the progress necessary to reliably participate in L.D.'s permanent care.

Mother offers a different interpretation of the evidence that the court relied on, but under our standard of review, we must credit the interpretation that supports the juvenile court's order. " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' ' ' (*Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319; see *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

Similarly, Mother relies on other evidence in the record to support the claim that maintaining her relationship with L.D. outweighs a permanent plan of adoption and suggests that the court ignored critical evidence. While it is undisputed that Mother and L.D. had a beneficial relationship and pleasant visits during the course of this dependency proceeding, this evidence does not compel the conclusion that severing the parent-child relationship would be detrimental to L.D. The juvenile court could have reasonably found that the bond between Mother and L.D. was not of such a quality that maintaining the relationship would outweigh the benefits of adoption. Mother has not shown that the court abused its discretion by finding that the beneficial parent-child relationship exception did not apply.

DISPOSITION

The order is affirmed.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.